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No. 88-1503

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

NANCY BETH CRUZAN, by her parents and co-guardians, LESTER L. and JOYCE CRUZAN
Petitioners

vs.

DIRECTOR OF MISSOURI DEPARTMENT OF HEALTH, and ADMINISTRATOR OF THE MISSOURI REHABILITATION CENTER AT MT. VERNON,

Respondents

vs.

THAD C. McCANSE, Guardian ad litem,
Respondent

On Writ of Certiorari to the Missouri Supreme Court

~~MOTION FOR LEAVE TO FILE~~ BRIEF IN BEHALF OF RESPONDENTS BY AMICI CURIAE FAMILIES FOR LIFE, SONS OF MARY, WARREN GODDARD AND FRANCES WATSON

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October 12, 1989

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Amici move for leave to file this brief supporting respondents. All parties have verbally consented to this brief, but written consents are still awaited.

Amici Curiae Families for Life, Sons of Mary, Warren Goddard and Frances

Watson are groups and individuals actively opposing euthanasia.

Their brief cites a precedent not cited in other briefs, the case of Dr. Karl Brandt.He was tried by American prosecutors and convicted by American judges of various crimes committed during the Nazi era. One of these crimes was euthanasia. Amici contend this precedent binds the U.S. courts. Karl Brandt v. United States, 333 U.S.836 (1948)

The brief of Amici also argues that a Missouri statute barring the execution of a mentally defective person who has committed a crime should also protect the life of a mentally incompetent person such as Nancy Beth Cruzan who has committed no crime Mo.Stat.552.060.

Respectfully,
ROBERT L.MAURO
Attorney for Amici Curiae

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On Writ of Certiorari to
The Missouri Supreme Court

BRIEF OF FAMILIES FOR LIFE, SONS OF MARY, WARREN GODDARD AND FRANCES WATSON AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

INTEREST OF THE AMICI CURIAE

Amicus Families for Life is a group opposed to euthanasia and abortion which conducts educational and other efforts

to alert the public to the dangers of euthanasia and abortion. Its address is 71 Fifth Avenue,Ronkonkoma,New York.Its President is John Mawn.

Sons of Mary is a national group of Catholic priests and other religious actively defending human life from the threats of abortion and euthanasia. Its Director is Father Robert Pearson, PO Box 111, West Long Branch, NJ 07764.

Warren Goddard is a Trustee of New Hampshire Right to Life, which opposes euthanasia and abortion at various levels. Mr. Goddard resides at 8 Wilson, Portsmouth, New Hampshire.

Frances Watson is an activist opposing abortion and euthanasia. She is Vice Chairman of New York 's Right to Life Party and a member of Celebrate Life, N.Y. She lives at 53 Cold Springs Rd.,Huntington, New York .

SUMMARY OF ARGUMENT

The United States tried various Nazis for War Crimes and Crimes Against Humanity after World War II. Acts of euthanasia by the Nazis in which the incurably ill, the retarded and others were deliberately killed by starvation, gassing and other means were treated as both war crimes and crimes against humanity. These precedents are binding on U.S. courts:they cannot now approve what was treated as a crime against humanity previously.

It is well established that a person who is not competent cannot be given the death penalty for a crime. This same principle of not deliberately killing an incompetent should also apply to Nancy Beth Cruzan, an incompetent who has committed no crime.

1. THE UNITED STATES CONVICTED NAZIS WHO COMMITTED EUTHANASIA OF CRIMES AGAINST HUMANITY AFTER WORLD WAR II. THE UNITED STATES IS BOUND BY THIS PRECEDENT IN EUTHANASIA CASES.

"The victorious powers of World War II tried and convicted the leaders of Germany of crimes against peace, and the laws of war, and the principles of humanity itself. What they charged to others, they cannot deny as binding upon themselves. It has become a test of faith that the victors now live by the rules of law they used to punish the leaders of Hitler's Germany.." [1]

Prof.Whitney Harris
Member of U.S.
Prosecution Staff
Nuremberg Trials

Stripping away the euphemisms, this case is one in which the U.S. Supreme Court is being asked to authorize the starvation/dehydration death of Nancy Beth

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1.W.Harris,Tyranny on Trial,560 (1954)

Cruzan, a young woman in a coma. The underlying thrust of the petition is that Nancy Beth Cruzan has a life whose quality is so poor that it is not worthy of of being lived. If she was conscious, it is said, she would deem her life not worthy of being lived, and would want to end it.

The Supreme Court is asked here to rule that there are lives so wretched, so devoid of hope, that they are unworthy of being lived, and that such lives may be ended by starvation/dehydration.

Euthanasia:
20th Century
Germany

The permission being sought in this case to end the life of Nancy Beth Cruzan does not mark the first time

in the twentieth century that a nation has considered granting permission to end life regarded as unworthy of being lived. In 1920, in the democratic Weimar Republic of Germany, a similar course was recommended. The critical work which led Germany towards euthanasia was published.

The title of this book was _The Permission to Destroy Life Unworthy of Life_. (Die Freigabe der Vernichtung lebensunwerten leben.)[2] Two eminent professors, one a medical scholar, the other a legal scholar, were the authors: professor of psychiatry Alfred Hoche, and the jurist, Karl Binding.

Professors Binding and Hoche included among "life unworthy of life" the incurably ill, the feebleminded, the retarded, and deformed children. The professors

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2. Another translation of the German which has been used is _The Release of the Destruction of Life Devoid of Value_.

deemed destroying or ending such life " a healing work" and a "healing treatment."[3]

Professor Binding said the physician a legal responsibility in "death assistance ," in the killing of the consenting participant, and in the killing of incurable idiots unable to consent.[4]

Professor Hoche said such a policy of killing was compassionate and consistent with medical ethics. He developed a concept of "mental death" which he found to exist in the psychiatrically disturbed, the brain damaged, and the retarded.These people were human "ballast" and empty shells of human beings. Ending the lives of such people, Professor Hoche argued, is not like other killing, but rather is "an allowable,useful act."[5]

3. R. Lifton, The Nazi Doctors,47(1986)
4. Ibid.
5. Ibid.

Hoche said these people having such meaningless lives, were already dead.

Hoche emphasized the tremendous economic burden placed on German society by those who had lives "unworthy of life."[6] Particularly costly, he said, were those who were young and who would require a lifetime of institutionalization. Hoche said the single less valuable members of of society have to be abandoned and pushed out.

Hoche predicted that a new age was coming in which society "will no longer heed the demands of an inflated concept of humanity and an overestimation of the value of life as such."[7]

During the Weimar years from 1920 to 1933 the Hoche-Binding thesis that life

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6 .R. Lifton, The Nazi Doctors,47, (1986).

7 .Ibid.

which is unworthy of life should be destroyed gained increasing acceptance in legal and medical circles in Germany.

On January 30,1933, Adolf Hitler was appointed Chancellor of Germany by President von Hindenburg. Hitler and most of his Nazi associates accepted the Hoche-Binding thesis that life unworthy of life should be destroyed. The Nazi government began to implement the ideas of Binding and Hoche.

Early in its administration, the Nazi regime introduced a sterilization program. In August 1933, Bavarian (German) Professor Walter Schultze, a Commissioner of Health, stated that the sterilization program was inadequate. Psychopaths, the mentally retarded and other inferior persons must be isolated and killed, he said.

Mental hospitals were encouraged to neglect their patients. Funds for the care of mental patients were reduced. The Nazis arranged orchestrated tours of mental hospitals for the press and other opinion makers, designed to show mental patients exhibiting their most unpleasant behavior.

The Nazi regime also used propaganda films to condition the German population in general and the medical profession in particular to the idea of killing life unworthy of life. Dr. Karl Brandt, Hitler's personal physician, suggested that a film be made of a pro-euthanasia novel written by another physician, Dr Helmut Unger. The film showed a physician giving a fatal injection to his incurably

ill wife who had begged him to end her pain. The film was shown throughout Germany, and Nazi research showed it played a significant part in gaining acceptance among the general public and the medical community for euthanasia.

Professor Robert Lifton, commenting on the film, "I Accuse,"[8] observed it was a distortion of Nazi policy. The Nazis called for killing mental patients against their will; the film showed a patient requesting euthanasia.

The actual beginning of the Nazi euthanasia program occurred in 1933 with the child euthanasia segment of the program. The Nazis had subtly encouraged parents with children who had defects to ask for euthanasia. A petition was received for the killing of a child named

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3. R. Lifton, The Nazi Doctors, 49, (1986).

Knauer. The child was blind, was missing one leg and part of an arm. The child was apparently not of sound mind.

Dr. Karl Brandt arranged to examine the child at the University of Leipzig. Dr. Brandt said if the facts as to the child were correctly reported, Hitler would allow the child to be killed. Any criminal charges against the doctors who killed the child would be personally be stopped by Hitler, Dr. Brandt indicated.

Dr. Brandt, after reviewing the child's condition, reported that the physicians in charge saw no reason to keep the child alive. The death of the child was regarded as a medical matter. It was regarded not as murder, but rather a putting to sleep of the child.

The actual decree establishing the euthanasia program in Germany was issued by Hitler in a secret letter in October, 1939, backdated to September 1, 1939, the date of the German invasion of Poland. The decree said a "mercy death" could be granted to patients "considered incurable."[9]

The decree read as follows:

> "Reich Leader Bouler and Dr. Brandt are charged with responsibility for expanding the authority of physicians,to be designated by name, to the end that patients considered incurable according to the best available judgment of their state of health can be granted a mercy death."[10]

To implement the decree, Hitler needed to establish,through Bouler and Dr, Brandt, an administration.This was done. Doctors were chosen as leaders who had

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9 . R. Lifton,The Nazi Doctors, 63 (1986)
10 .. Ibid.

known sympathies for euthanasia.

In the euthanasia program, the Hoche-Binding term "life unworthy of life" was repeatedly used.

The Nazis developed an adult euthanasia program in addition to the child euthanasia program. The adult program was known as T-4, an abbreviation for the address 4 Tiergarten Strasse of the Berlin Chancellery office from which the program was directed.

The euthanasia program for children who were mentally defective was expanded to include children who were not mentally ill, namely, Jewish children. The preferred method (although not the only method) was starvation. Dr. Herman Pfannmuller favored starvation because he did not want to waste medication.

The method of starvation of children was a gradual decrease of rations rather then sudden withdrawl of all nourishment. The child euthanasia program, like the adult program, T 4, was kept a secret, even though a propaganda program through films and other media promoted the acceptance of euthanasia throughout Germany.

The preferred method of killing adults "unworthy of life" in the adult euthanasia program was gassing, with the use of carbon monoxide gas. Adults adjudged to have lives "unworthy of life" were taken quietly from hospitals, nursing homes, and insane asylums to six main killing centers in Germany at Sonnenstein,Hartheim, Grafeneck, Bernburg,Brandenburg, and Hadamar. Medical personnel were

assigned to these killing centers to preserve a medical aura, although Dr. Karl Brandt originally opposed killing life unworthy of life by poison gas. He felt such killings, outside of the hospital, nursing home, or insane asylum-medical settings- detracted from the image of euthanasia as a solely medical matter .

As the Nazi forces moved eastward into Poland and other countries, the insane, and ill in hospitals in these occupied nations were likewise killed as "life unworthy of life." People who were not in the hospitals or asylums when the Nazis invaded but who were deemed "unworthy of life" were taken to these facilities to be killed, preserving a medical aura for the killings.

In July, 1940, Bishop Wurm, head of the Lutheran Church in Wuerttemberg, Germany, protested killings at the Grafeneck killing center in Germany in a letter to Nazi Minister Wilhelm Frick:

> "For some months past, insane, feeble minded, and epileptic patients have been transferred on the orders of the Reich Defense Counsel.Their relatives are informed a few weeks later that the patient concerned has died of an illness, and that, owing to the danger of infection, the body has had to be cremated.Several hundred patients from institutions in Wurttemberg alone must have met their death in this way, among them war wounded of the Great War.
>
> The manner of the action,particularly of deceptions that occur,is already sharply criticized. Everybody is convinced that the causes of deaths which are officially published are selected at random. When, to crown everything, regret is expressed in the obituary notice that all endeavors to preserve the patient's life were in vain,this is felt to be a mockery. The air of mystery gives rise to the thought that something is happening that is contrary

to justice and ethics and cannot therefore be defended by the government. It also appears very little care was taken in the selection of the patients destined for annihilation. The selections were not limited to insane persons,but included also persons capable of work, especially epileptics.

What conclusions will the younger generation draw when it realizes that human life is no longer sacred to the state? Cannot every outrage be excused on the grounds that the elimination of another was of advantage to the person concerned? There can be no stopping once one starts down this decline. God does not permit people to mock Him. Either the National Socialist State must recognize the limits God has laid down, or it will favor a moral,decline and carry the state down with it." [11]

No response was made to this letter.

On September 5,1940,Bishop Wurm again wrote Minister **Frick**:

"On the 19th of July, I sent you a letter about the systematic extermination of lunatics,feeble-minded and epileptic persons.Since then this practice has reached

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11. R. Conot, Justice at Nuremberg,208 (1983)

tremendous proportions;recently the inmates of old age homes have also been included. The basis for this practice seems to be the opinion that in an efficient nation there should be no room for weak and frail people. It is evident from the many reports which we are receiving that the people's feelings are being badly hurt by the measures ordered and that a feeling of legal insecurity is spreading which is regrettable from the point of view of national and state interests. If the leadership of the state is convinced that it is question of an inevitable war measure, why does it not issue a decree with legal force, which would at least have this good good point that official quarters would not have to seek refuge in lies? But if-as can be assumed with certainty-Germany is in a position to feed these members of the nation as well, why then these rigorous steps? Is it necessary that the German nation should be the first civilized nation to return, in the treatment of weak people, to the habits of primitive races? Does the Fuehrer know about this matter? Has he approved it? I beg you not to leave me without a reply in this tremendously serious matter."[12]

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12. W. Harris, Tyranny On Trial,323-324, (1954)

In July, 1941, a pastoral letter from Germany's Catholic Bishops was read at all Catholic churches in Germany, stressing the obligation to oppose the taking of innocent lives,even if such opposition resulted in German Catholics losing their own lives.

Four weeks later, on August 3,1941, a sermon was given which stopped the Nazi euthanasia program, at least for a time. The sermon was given by the Catholic Bishop of Munster, Clemens Count von Galen. He said in part:

> "It is said of these patients: They are like an old machine which no longer runs, like an old horse which is hopelessly paralyzed,like a cow which no longer gives milk.
>
> What do we do with a machine of this kind? We put it in the junkyard. What do we do with a paralyzed horse? No, I do not wish to push the comparison to the end..

We are not talking here about a machine, a horse, nor a cow... No, we are talking about men and women, our compatriots, our brothers and sisters. Poor unproductive people, if you wish, but does this mean they have lost their right to live?"

(If the principle was established that all which is unproductive is to be destroyed or discarded) "then think of the horrible state we shall all be in when we are weak and sick!.. invalids...brave soldiers, when they come home seriously wounded...none of us will be certain of his life..."

> "We wish to withdraw ourselves from their influence (the authorities) so that we may not be contaminated by their thinking and their ungodly behavior so that we may not participate and share with them in the punishment which a just God should and will pronounce upon all those who-like ungrateful Jerusalem-do not wish what God wishes." [13]

Bishop von Galen's sermon was repro-

and distributed throughout Germany. The

Allies planned to and did drop copies

from airplanes flying over German troops.

13. R. Lifton, The Nazi Doctors, 93-94 (1986)

As the distribution of the sermon spread through the civilian and military population of Germany, anti euthanasia sentiment reached its heights. It probably triggered protests by other clergymen.[14] Martin Borman, Hitler's aide, said Bishop Von Galen deserved the death penalty.

14.Ten days after Bishop von Galen's sermon,the Bishop of Limburg wrote a letter protesting the euthanasia center at Hadamar:

> "...Several times a week buses arrive in Hadamar with a considerable number of such victims. School children of the vicinity know this vehicle and say: 'There comes the murder box again.' After the arrival of the vehicle, the citizens of Hadamar watch the smoke rise out of the chimney and are tortured with the ever present thought of the miserable victims, especially when repulsive odors annoy them, depending on the direction of the wind.
>
> The effect of the principles at work here are: Children call each other names and say.' You're crazy;you'll be sent to the baking oven at Hadamar.'....You hear old foks say, 'Don't send me to a state hospital! After the feeble-minded have been finished off,

Approximately three weeks after Bishop von Galen's sermon, Hitler apparently ordered Dr. Karl Brandt to halt or delay temporarily the euthanasia program (on August 24,1941). But the halt was only temporary.

Soon after the widely distributed and publicized sermon of Bishop von Galen, six Nazi gas chambers in Germany ceased

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the next useless eaters whose turn will come are the old people.' "

All God fearing men consider this destruction of helpless beings as crass injustice. And it anybody says Germany cannot win the war, if there is yet a just God, these expressions are not the result of a lack of a love of fatherland but of a deep concern for our people.The population cannot grasp that systematic actions are carried out which in accordance with Par. 211 of the German criminal code are punishable with death.High moral authority as a moral concept has suffered a severe shock as a result of these happenings...

Officials of the secret police, it is said, are trying tc suppress discussion of the Hadamar occurrences by ..threats..

I beg you...to prevent further transgressions of the Fifth Commandment of God."

W.Harris,Tyranny on Trial, 325-326 (1954)

for the most part to function.They would be reassembled to the East, at various sites, a number of them in Poland. The euthanasia killings, however, continued, in more isolated settings, such as concentration camps. "Wild euthanasia," in which doctors decided on their own initiative who was "unworthy of life" took the place of the structured guidelines which previously existed in the T-4 program.

"Patients were now killed not by gas but by starvation and drugs, the latter method rendering the killing still 'more medical.'" [15] The children's program was not included under the bait in the T-4 adult euthanasia program brought about by Bishop von Galen's sermon. Killings of children had been by drugs and starvation, not gas

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15. R. Lifton, The Nazi Doctors 96 (1986)

from the beginning, and this continued,

"Special diets"[16] were instituted, in which patients would not be fed equally. In 1943, Dr. Pfannmuller established Hungerhauser ("Starvation houses") for an older population. "In many places, mentally ill patients had already been fed insufficiently; and the idea of not nourishing them was in the air."[17]

Dr. Pfannmuller and his Nazi medical associates were given complete latitude on whom to choose for starvation. This "pseudo nourishment" was recognized a a method of killing ...that in the classic sense is no killing; no one time action with a recognizable cause or conclusion."[18]

Another physician, Dr. Valentin Falthauser of the Kaufbeuren mental asylum,

16. R. Lifton, The Nazi Doctors, 98 (1986)
17. Ibid.
18. Ibid., 99.

devised the Kaufbeuren menu, which was totally fat free. The effect of such a menu, he said, "should be slow death, which should ensue in about three months." [19]

At Eglfing-Haarr mental hospital, the motto was, "We give them no fat, then they go on their own." [20]

Commenting on the role of the Nazi doctors in the euthanasia program in his recent book, Professor Robert Lifton observed that there was:

> "...a powerful Nazi impusle, sometimes conscious, sometimes not, to bring the greatest degrees of legitimization to the widest range of killing." [21]
>
> "...The Nazi message for victims, for possible observers, and mostly for themselves was: all our killing is medical,medically indicated,and carried out by doctors." [22]

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19. R. Lifton, The Nazi Doctors 98 (1986)
20. Ibid. 99
21. Ibid. 138
22. Ibid. 139

THE NUREMBERG TRIALS: EUTHANASIA

During World War II, the Allied Powers on several occasions warned the Nazis that criminal acts they committed would be tried and punished after the war. An International Military Tribunal (IMT) did conduct trials pursuant to these warnings after the war. Prosecutions were also heard by Tribunals in the various zones established in Germany after the War (e.g. the U.S. Zone, The British Zone.)

In the U.S. Zone of Germany, U.S. Military Tribunal I was established October 25,1946 under General Order 68 by Command of the Military Government for the trial of offenses recognized by Law No. 10 of the Control Council of Germany.[23]

The Military Governor of the American

23. Trials of War Criminals Before the Nuernberg Tribunals, Volume I, xvii (October 1946-1949), U.S. Government Printing Office.

Zone in Germany appointed as Judges: Presiding Judge Walter Beals, Chief Justice for the Supreme Court of Washington, Judge Harold L. Sebring, Associate Justice of the Supreme Court of Florida, Judge Johnson T. Crawford, formerly Judge of a District Court of Oklahoma, and Judge Victor C. Swearingen, Alternate Member, formerly Special Assistant to the Attorney General of the United States.[24]

The decision on whom to indict and for what offenses rested with Brigadier General Telford Taylor, U.S. Army. General Taylor had previously served during the International Military Tribunal under United States Chief Counsel Mr. Justice Robert H. Jackson.[25]

On October 26,1946, Chief Counsel Telford Taylor filed various indictments

24. Trials of War Criminals Before the Nuernberg Tribunals, Vol.I, 5, (October 1946-1949).

25 Ibid., xxi.

charging various crimes against Dr. Karl Brandt and others. These crimes included but were not limited to War Crimes and Crimes Against Humanity as they were defined by Article II of Control Council Law No. 10, duly enacted by the Allied Control Council on December 20,1945.

Article II of Control Council Law No. 10 stated in part:

> "1.Each of the following is recognized as a crime:
>
> (a) Crimes Against Peace...
>
> (b) War Crimes. Atrocities or offenses againt person or property constituting violations of the laws or customs of war, including but not limited to murder,ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages,plunder of public or private property,wanton destruction of cities,towns,or villages,or devastation not justified by military necessity.

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26 Trials of War Criminals Before the Nuernberg Tribunals, Vol. I, xvii (October 1946-1949)

> (c) Crimes Against Humanity. Atrocities and offenses, including but not limited to murder, extermination, enslavement,deportation,imprisonment, torture, rape, or other inhumane acts committed against any civilian population,or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated."[27]

The Second Count of the indictment, War Crimes, charged Dr. Karl Brandt with involvement in the "euthanasia program" as follows:

> "9. Between September 1939 and April 1945 the defendants Karl Brandt , Blome, Brack and Hoven unlawfully,willfully, and knowingly committed war crimes, as defined by Article II of Control Council Law No. 10,in that they were principals in,accessories to, ordered, abetted,took a consenting part in, and were connected with plans and enterprises involving the execution of the so-called "euthanasia" program of the German Reich in the course of which the defendants herein murdered hundreds of thousands of human beings,

27.Trials of War Criminals Before the Nuernberg Tribunals, Vol. I, xvii (October 1946-1949)

including nationals of German-occupied countries.This program involved the systematic and secret execution of the aged,insane, incurably ill, of deformed children, and other persons, by gas, lethal injections, and diverse other means in nursing homes, hospitals, and asylums. Such persons were regarded as 'useless eaters' and a burden to the German war machine.The relatives of these victims were informed that they died from natural causes, such as heart failure. German doctors involved in the 'euthanasia' program were also sent to Eastern occupied countries to assist in the mass extermination of Jews."[28]

The Third Count of the indictment, Crimes Against Humanity, charged Dr. Karl Brandt with involvement in the "euthanasia" program in language almost identical to that in the War Crimes charge:

> "14. Between September 1939 and April 1945, the defendants Karl Brandt,Blome,Brack and Hoven unlawfully,willfully, and knowingly committed crimes against humanity, as defined by Article II of Control

28 Trials of War Criminals Before the Nuernberg Tribunals, Vol. I, 15 (October 1946-1949)

> Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the execution of the so-called 'euthanasia' program of the German Reich, in the course of which the defendants herein murdered hundreds of thousands of human beings, including German civilians of other nations. The particulars concerning such murders are set forth in paragraph 9 of count two of this indictment and are incorporated herein by reference."[29]

Both Count Two as to War Crimes and Count Three as to Crimes Against Humanity contained a concluding charge stating that the charges preceding were also violations of international conventions, certain Hague Regulations of 1907, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, the internal penal laws of countries in which such crimes

29 Trials of War Criminals Before the Nuernberg Tribunals, Vol. I, 16-17 (October 1946-1949)

were committed and of Article II of Control Council Law No. 10.

Dr. Karl Brandt was represented by legal counsel at his trial, and participated in his defense. He was found guilty of War Crimes and Crimes Against Humanity, including participation in the euthanasia program.[30]

The United States Judges sitting on U.S. Military Tribunal sentenced Dr. Karl Brandt to death by hanging.

Dr. Karl Brandt, through his legal Counsel, petitioned for clemency to the Military Governor of the United States Zone of Occupation in accordance with Article XVII of Ordinance No. 7 of the Military Government for Germany (U.S.).[31]

Thereafter he petitioned the Secretary of War of the United States. Finally,

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30. Trials of War Criminals Before the Nuernberg Tribunals, Vol. II, 198 (October 1946-1949).

31. Ibid.p.302

as a last resort, Dr. Karl Brandt and other defendants petitioned the U.S. Supreme Court for a writ of habeas corpus and for a writ of prohibition against the proceeding or an order nullifying the trial.

On February 16,1948, the Motions for leave to file petitions for writs of habeas corpus and prohibition were denied by the U.S. Supreme Court. Mr. Justice Black, Mr. Justice Murphy, and Mr. Justice Rutledge were of the opinion that the petitions should be set for hearing on the question of the jurisdiction of the Court. Mr. Justice Jackson took no part in the consideration or decision of these applications. Cf. Karl Brandt v. United States, 333 U.S.836(1948).

In June, 1948, Dr. Karl Brandt was executed by hanging in Germany, all appeals to reverse his conviction an sentence having failed.[32]

Amici contend that the proceedings in which Dr. Karl Brandt was indicted, tried, convicted, sentenced and his various appeals were solely American proceedings, and that these proceedings constitute a binding precedent on the American system of justice. One of reasons Dr. Karl Brandt was executed was that he was adjudged to have participated in the euthanasia program in which various persons, including incurably ill persons were executed by various means, including starvation.

The United States, having said that Dr. Karl Brandt committed a crime

32. Dr. Karl Brandt was executed by hanging on June 2,1948. Trials of War Criminals Before the Nuernberg Tribunals, Vol. I, 3,(October 1946-1949).

against humanity, a war crime, and a violation of international law in executing incurably ill persons, is honor bound to disallow any attempt to deliberately end the life of an incurably ill person such as Nancy Beth Cruzan by depriving her of the nutrition and hydration indispensable to every human being, and without which a human being will starve to death.

Even if the United States had not tried and convicted Dr. Karl Brandt for euthanasia, among other charges, the deliberate ending of the lives of the incurably ill has, in international law, been established as a crime against humanity.[33] This law has evolved "by the case method...it advances at the expense of those who wrongly guessed the law and

33. Dr. Wilhelm Frick, Nazi Minister of the Interior, was found guilty of allowing euthanasia in nursing homes and asylums by The International Military Tribunal. Trials of Major War Criminals, Vol I,247,301 (1947)

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, MORAL PRINCIPLE, AND LAW PROHIBIT THE KILLING OF AN INSANE PERSON OR AN INCOMPETENT PERSON SUCH AS NANCY BETH CRUZAN

It is clear that an insane or incompetent person cannot be legally killed in the United States.The right of the incompetent not to be executed is one "based on moral principles deeply imbedded in the traditions and feelings of our people and itself protected by the Due Process Clause of the Fourteenth Amendment.." Carita-tivo v. California, 357 U.S. 549,547 (1958).

"Not a state[34] in the union supports the notion that an insane man under sentence of death could legally be

34. Missouri Revised Statute§ 552.060 states in part: "No person condemned to death shall be executed..if he lacks capacity to understand..the punishment about to be imposed..."

executed." Solesbee v. Balkcom, 339 U.S. 9,20 (1950).

It would be a denial of equal protection of law under the Fourteenth Amendment if an incompetent person sentenced to death for a crime is protected from death by the Due Process Clause, moral principle and state laws, and an incompetent person not facing the death penalty could be legally killed by society or at the request of others. Jackson v. Indiana, 406 U.S. 715 (1972).

CONCLUSION

The judgment of the Supreme Court of Missouri should be affirmed. Respectfully submitted.

October 12,1989 Robert L. Mauro